COURT, U. S.
FILED
JAN 14 1975

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-770

CELANESE CORPORATION and FIBER INDUSTRIES, INC.,
Petitioners,

v.

ATELIERS ROANNAIS DE CONSTRUCTIONS TEXTILES
and ARCT, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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This is petitioners' second effort to have this Court review the discretionary power of a District Court in connection with its ancillary discovery proceedings.* As in the case of their previous petition, there are no special or important reasons why the writ should be granted. Peti-

* See *Celanese Corporation and Fiber Industries, Inc., Petitioners,* v. *The Honorable Robert W. Hemphill, District Judge, Respondent,* (No. 73-633), 94 S.Ct. 725 (1973), in which petitioners' petition for writ of certiorari was denied.

tioners have not been denied due process; they have not been denied the right of discovery. There is no appropriate Federal question involved.

In an effort to preserve a proper balance between the respective conveniences of petitioners, respondents and the Court, and to assure the proper administration of justice, the District Courts below have, in their discretion, imposed certain reasonable restrictions on petitioners' unreasonable efforts to compel Henri Crouzet, a French citizen residing in France, to appear in the United States and be deposed in discovery proceedings pending in an action in which neither Mr. Crouzet nor any company with which he is associated, including the respondents herein, are parties.*

Specifically, petitioners take exception to two interlocutory orders, one of the District Court of South Carolina (per Judge Hemphill), filed July 13, 1973 (9a-14a) and the other of the District Court for the Middle District of North Carolina (per Chief Judge Gordon), dated November 15, 1973 (15a-17a). Neither order denies petitioners the right to compel Henri Crouzet to appear and be deposed in their Florida action.

Following well established precedents, the South Carolina District Court granted Henri Crouzet limited immunity, the order providing that Mr. Crouzet could not be

* Petitioners are parties in an action pending in the District Court for the Southern District of Florida (Civil Action 71-1026-CIV-CA). Respondents are parties in an unrelated action pending in the District Court for the District of South Carolina (Civil Action 71-306). Petitioners are not parties in the South Carolina proceeding and respondents are not parties in the Florida action.

subpoenaed by petitioners while he was attending proceedings in that Court for the purpose of giving testimony (11a-13a). Nothing in such order, however, would prevent the issuance and service of a subpoena on Mr. Crouzet within the District of South Carolina if his presence there was for any other purpose.

The order of the District Court for the Middle District of North Carolina was in the nature of a protective order. The quashing of petitioners' subpoenas was expressly made without prejudice to the rights of petitioners again to have subpoenas issued upon a showing that the depositions taken in the South Carolina action,* supplemented, if necessary, by 'he use of letters rogatory, would not produce the information needed by petitioners in their Florida action (16a-17a).

The three questions presented in the petition for certiorari do not fairly state issues raised in the record or by the decision of the Court of Appeals. There is only one issue and that is whether or not it was an abuse of discretion for the District Courts to provide reasonable safeguards for the protection of a prospective non-resident witness in an ancillary discovery proceeding. The Court of Appeals has thoroughly reviewed the action of both District Courts and upon substantial authority has held there was no such abuse (2a-4a). Petitioners' contrived questions do not establish an adequate reason for this Court to review that decision or to overrule the well established precedents on which the Courts below rely.

* Judge Gordon observed: "These depositions, taken on three separate occasions over a period of two years, total almost one thousand pages and were conducted in an adversary proceeding with Judge Hemphill presiding" (21a-22a).

Conclusion

The petition for writ of certiorari should be denied.

Respectfully submitted,

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